

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3
4 VOTER REFERENCE FOUNDATION, et al.,

5 Plaintiff,

6 VS.

NO. CV 22-00222 JB/KK

7 Hector Balderas, Attorney General
8 for the State of New Mexico, et al.,

9 Defendants.

10 ZOOM HEARING

11 Transcript of Motion Proceedings before
12 The Honorable James O. Browning, United States
13 District Judge, Albuquerque, Bernalillo County,
New Mexico, commencing on May 11, 2022.

14 For the Plaintiff: Mr. Eddie Greim; Mr. Carter
15 Harrison

16 For the Defendant: Ms. Olga Serafimova
17
18
19

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1 THE COURT: All right. Good morning
2 everyone. I appreciate everybody making themselves
3 available to me this morning.

4 The Court will call Voter Reference
5 Foundation, LLC versus Hector Balderas -- I guess
6 that's "LLC, et al." -- versus Hector Balderas, et
7 al., Civil Matter Number 22-CV-0222 JB/KK.

8 If counsel will enter their appearances for
9 the plaintiffs.

10 MR. GREIM: Your Honor, you've got Eddie
11 Greim from Graves Garrett, LLC, in Kansas City. I
12 think I've just been admitted pro hac vice. And I'll
13 let Mr. Harrison introduce himself.

14 THE COURT: All right. Mr. Greim, Mr.
15 Harrison, good morning to you.

16 And for the defendants.

17 MS. SERAFIMOVA: Good morning, Your Honor.
18 Olga Serafimova for defendants. And I apologize, I
19 need to log off and log back in real quick. I'm
20 having trouble with my camera.

21 THE COURT: All right. We'll wait for you.
22 Go ahead. Good morning to you, Ms. Serafimova.

23 (A discussion was held off the record.)

24 THE COURT: Good morning, Ms. Serafimova.

25 All right. Let me go over a couple of

1 things. Since the plaintiff is an LLC, I'm
2 assuming -- and I'll tell you where I am in my work
3 on this case -- but since it's an LLC, if I could get
4 the plaintiff to send a letter to the Court
5 identifying the principal members of it, just in
6 case. I don't know your case well enough to know
7 whether it's going to be just on federal question
8 jurisdiction, or it might break into some sort of
9 diversity jurisdiction. But if the plaintiffs would
10 provide that letter, and then indicate the
11 citizenship of each of the principals or members, I
12 would appreciate that.

13 Is that acceptable, Mr. Greim?

14 MR. GREIM: Absolutely, Your Honor.

15 THE COURT: All right. I have read -- I
16 read the materials for the emergency motion. And as
17 I began to work on it, I realized I probably needed
18 to educate myself a little bit about this case. So I
19 went ahead and got the file for next week -- I think
20 we're having the hearing on the 17th -- and began to
21 read that.

22 Then the second motion came in, so I
23 stopped and read the second motion. So I'm not on
24 top of things quite as much because I haven't really
25 mastered the materials for the hearing next week,

1 which I began to realize yesterday I better get
2 working on that to maybe be better informed for the
3 issues we have here today.

4 So that's kind of where I am in my
5 preparation. So if that helps you in trying to
6 figure out where I am, that's where I am on my study
7 on this case.

8 We've got somebody else coming on?

9 MS. SERAFIMOVA: I don't believe so. I
10 shared the Zoom link with the Secretary of State
11 General Counsel, so they may join, but I'm not seeing
12 anyone from -- oh, there he is, that is him.

13 THE COURT: All right. They're your
14 motions, Ms. Serafimova. If you wish to argue in
15 support of one or both, however you'd like to argue,
16 I'll let you start this morning.

17 MS. SERAFIMOVA: Thank you, Your Honor. I
18 appreciate that. I think I'll group them as much as
19 possible. And then, if there are unique
20 considerations for one or the other, I'll discuss
21 those separately.

22 So Your Honor, (Zoom audio garbled) close
23 to two months (Zoom audio garbled.)

24 THE COURT: Hold on, Ms. Serafimova.
25 You're breaking up real bad, so we're having -- my

1 court reporter is having difficulty transcribing. Is
2 there any way that you can maybe speak a little
3 clearer or slower or something maybe to help her?

4 MS. SERAFIMOVA: Absolutely.

5 THE COURT: All right.

6 MS. SERAFIMOVA: And please let me know if
7 that doesn't help. I can also turn off my camera
8 which will probably improve the internet connection.

9 Okay. So thank you.

10 On March 28, or close to two months ago,
11 the plaintiffs represented to this Court that they
12 are ready to proceed. They filed a motion for
13 preliminary injunction requesting expedited
14 consideration (Zoom audio garbled.)

15 THE COURT: All right. It's not working.
16 You were okay for a while and then you faded on us.

17 MS. SERAFIMOVA: With your permission, Your
18 Honor, I'll turn off the camera, and hopefully that
19 helps.

20 THE COURT: Okay.

21 MS. SERAFIMOVA: Does it?

22 THE COURT: We'll give it a try. Go ahead.

23 MS. SERAFIMOVA: As I was saying, Your
24 Honor, close to two months ago, plaintiffs
25 represented to the Court that they were ready to

1 establish that they are entitled to preliminary
2 injunction. They filed their motion, they requested
3 expedited consideration, and essentially asserted
4 that they have all the facts and law necessary to
5 receive that relief.

6 Now, next week's hearing was originally
7 scheduled for April 12. And plaintiffs did not serve
8 any subpoenas for that hearing date.

9 However, now, again two months later,
10 they're attempting to serve a total of five subpoenas
11 for the Secretary of State employees (Zoom audio
12 garbled.)

13 THE COURT: I don't think this is going to
14 work, Ms. Serafimova. My court reporter, Ms. Bean,
15 just can't pick up what you're saying.

16 MS. SERAFIMOVA: Okay. Can I switch to my
17 phone? It may be better. And I apologize, but let
18 me try to log in from a different device.

19 THE COURT: Okay.

20 MS. SERAFIMOVA: Hello again, Your Honor.
21 Can you hear me better right now?

22 THE COURT: Yeah, that's much stronger.

23 MS. SERAFIMOVA: Okay, great. Wonderful.
24 My apologies again. Thank you for your patience.

25 So I'm sorry, but I'll start from the

1 beginning one last time, hopefully.

2 But as I was saying, you know, close to two
3 months ago plaintiffs represented to the Court that
4 they were ready to proceed; that they were entitled
5 to preliminary injunction motion. They requested
6 expedited consideration, and essentially asserted
7 that they have all the facts that are necessary for
8 them to meet their burden.

9 Now -- and I'm sorry, actually the hearing
10 was originally scheduled for April 12, and plaintiffs
11 did not file or did not serve any subpoenas for that
12 hearing date.

13 Now, however, again close to two months
14 later, they have attempted to subpoena testimony of
15 five Secretary of State employees. And I say
16 "attempted," because they have actually failed to
17 tender the requisite fees under Rule 45(b)(1) for any
18 one of these five subpoenas.

19 Now, because defendants are acting in good
20 faith, we have not challenged two of these
21 subpoenas -- two of the first three subpoenas that
22 were served -- which were for the testimony of
23 Elections Director Mandy Vigil, and Compliance
24 Officer Lauren Hutchinson. Nor have we challenged
25 the extensive request for documents that accompanied

1 these subpoenas or the request for documents that was
2 included in the subpoena that was served on the
3 Secretary of State.

4 At this point, however -- and with all due
5 respect to VRF -- we do feel that they have engaged
6 in a fishing expedition. The most recent two
7 subpoenas were served only yesterday, which is seven
8 calendar days before the hearing.

9 And as the Court is aware, defendants
10 strongly believe that granting -- or perhaps you will
11 see once you review the file thoroughly -- but it is
12 our strong position that granting the preliminary
13 injunction would actually result in irreparable harm
14 to New Mexico voters, as well as the Secretary of
15 State's Office, because it will erode public
16 confidence in our voting system. And so we are
17 entitled to prepare -- we have the right to prepare
18 to defend that position. And yet we are constantly
19 ambushed with new and additional subpoenas.

20 Now, turning to the first motion to quash,
21 which is the subpoena that was served on Secretary of
22 State Maggie Toulouse Oliver. I first want to
23 address VRF's mention that they've offered us
24 alternatives to having her appear at the hearing.
25 The first alternative that we discussed in good faith

1 was their request to have her -- to depose her for
2 two hours prior to the hearing. And of course, given
3 the entire hearing is two hours, that two-hour
4 deposition would have been as big, if not bigger,
5 burden on her time, and her other responsibilities
6 than the hearing.

7 Their second offer was to be allowed to
8 post the voter data of each and every New Mexican
9 back on their website without the threat of criminal
10 prosecution. And, of course, we could not agree to
11 that, because it is our -- that is our entire case,
12 that doing so would harm New Mexicans, would harm the
13 Secretary of State, and is just something that we
14 cannot agree to.

15 And then their final offer was to subpoena
16 Deputy Secretary Pino and Communications Director
17 Curtis instead of the Secretary of State. And as we
18 explained in our second motion to quash, we have no
19 time to prepare for them to testify. And again,
20 Deputy Secretary Pino, being the right hand of the
21 Secretary of State, is under the same extreme time
22 limitations and burdens as the Secretary herself.

23 So turning to, you know, the merits of our
24 motion. In their response, VRF argues that the
25 Secretary's testimony is necessary because she has

1 personal knowledge on four items. They have listed
2 four items in their response.

3 The first one being her office's policies
4 which gave rise to the so-called use restriction.

5 The second one being her own publicly
6 expressed conclusions that VRF's conduct is unlawful.

7 The third item being the referral of VRF's
8 conduct of posting New Mexico voter data on their
9 website to the Attorney General's Office for criminal
10 prosecution.

11 And the last item being her own social
12 media posts, public statements, and her contributions
13 to the ProPublica article that is cited in the
14 complaint or the motion for preliminary injunction.

15 Now, under the Apex Doctrine, which VRF
16 asserts is not applicable -- and if it is applicable,
17 it is their position that it only applies where a
18 public official lacks personal knowledge -- the
19 standard is actually that, to justify the involuntary
20 testimony of a high public official, such as the
21 Secretary of State, that official has to have unique
22 personal knowledge, not just personal knowledge. Of
23 course, the Secretary of State has personal knowledge
24 about many things. But the doctrine requires unique
25 personal knowledge to justify calling her in to court

1 and taking her away from her very important
2 day-to-day responsibilities.

3 Now, with respect to the first item,
4 policies of the office which gave rise to the use
5 restrictions, there is nothing unique about the
6 Secretary of State's personal knowledge about those.
7 And Elections Director Mandy Vigil is ready and able
8 to testify about those policies.

9 With respect to the other three items,
10 first of all, none of those are contested. We don't
11 contest that she has expressed publicly that the act
12 of posting the voter data of each and every New
13 Mexican registered voter online is unlawful under the
14 Elections Code.

15 We don't contest that her office referred
16 that conduct to the Attorney General's Office for
17 criminal prosecution.

18 And we certainly don't contest the
19 statements that have been made publicly, whether on
20 social media or in press releases or quoted in
21 articles.

22 So none of those are at issue.

23 And secondly, VRF has every written
24 document that is relevant to each one of those three
25 items. And to the extent they don't, we will provide

1 each and every piece of paper that exists and is
2 relevant to those three items in response to the
3 subpoenas that we are not challenging.

4 And so, you know, the evidentiary value of
5 questioning the Secretary of State on those three
6 items is close to none.

7 And additionally, there are a number of
8 alternative sources that that -- you know, that
9 evidence can be gathered from through discovery. For
10 example, interrogatories, requests for admissions;
11 again, other witnesses, and also even deposition on
12 written questions.

13 And so under the Apex Doctrine, given that
14 there is nothing unique about the Secretary of
15 State's personal knowledge that these are uncontested
16 factual assertions, that they are provable by, you
17 know, the actual written documentation that exists,
18 and that there are alternative methods in discovery
19 to obtain the relevant evidence, the Apex Doctrine
20 strongly, strongly supports our motion to dismiss --
21 I'm sorry, motion to quash her subpoena.

22 But more importantly, these items or the
23 topics that they wish to question the Secretary on
24 are not relevant to the issues that are before this
25 Court. So the question before this Court is whether

1 or not Section 1-4-5.6 of the Election Code is
2 unconstitutional. That's the question.

3 And at the hearing next week, VRF has the
4 burden to establish likelihood success on that
5 question, that constitutional question, and also
6 irreparable harm. That is their burden. And any
7 evidence that they present should be relevant to
8 those two items.

9 Now, because this is a First Amendment
10 case, those two factors actually merge together,
11 because one cannot show irreparable harm in the First
12 Amendment context unless their First Amendment rights
13 are actually being violated.

14 Now, VRF believes that the relevant section
15 is 1-4-5.5 of the Election Code. But that is
16 incorrect. So the Election Code has three relevant
17 provisions that deal with voter data and how that is
18 distributed publicly. One is Section 1-5-22, which
19 says that, "Any state or county employee who has
20 access to voter data is prohibited from selling it,
21 loaning it, providing access to it, or otherwise
22 surrendering" that voter data. So that section
23 applies to employees with access to the data.

24 Then we have Section 1-4-5.5, which only
25 pertains to people who actually submit a written

1 request for voter data. And that section says that,
2 "Every such requester must sign an affidavit
3 promising not to use that voter data for unlawful
4 purposes." And there are three purposes that are
5 permitted under that section. And it also says to
6 "not make it available to others for unlawful
7 purposes."

8 So these two sections cover people who
9 actually submit themselves a request for voter data and
10 sign an affidavit, and employees who have access to
11 voter data by virtue of their employment
12 responsibilities.

13 What these two sections do not cover is
14 actually the situation that's in front of the Court,
15 which is where someone -- in this case VRF -- comes
16 into possession of New Mexico voter data by means
17 other than actually submitting an affidavit
18 themselves, and by means other than being an employee
19 with access to such data. So this is where Section
20 1-4-5.6 comes into place. And it says, "Unlawful use
21 of voter data, which is a fourth degree felony,
22 consists of the knowing and willful use of such
23 information for purposes prohibited by the Voter
24 Records System Act."

25 So Section 1-4-5.6 explicitly references

1 the Voter Records System Act, which is Chapter 1-5,
2 which is where Section 1-5-22 resides.

3 Now, again, Section 22 says, "State
4 employees with access to data may not sell it or
5 otherwise make it publicly available." What Section
6 1-4-5.6 does is bridge the gap by making the same
7 prohibition applicable to people who are not state
8 employees or county employees. So anyone who comes
9 into possession of New Mexico voter data by means
10 other than requesting it by filing an affidavit or
11 having access to it by virtue of being a state
12 employee, is covered under 1-4-5.6, and is prohibited
13 from selling such data, loaning it, providing access
14 to it, or otherwise surrendering the data. And that
15 is the statute that is at issue before the Court.

16 And of course, given that this is a
17 constitutional case, the Court has the responsibility
18 to decide it on the narrowest grounds possible.

19 So while VRF spends a lot of time and
20 effort arguing the constitutionality of Section
21 1-4-5.5, which is where the affidavit resides -- the
22 requirement for an affidavit resides -- that section
23 is actually not relevant to the case. Neither
24 plaintiff signed such an affidavit. Ms. Steinberg
25 did not, and no one from VRF did.

1 As we explain now in response to -- you
2 know, position to the motion for preliminary
3 injunction, VRF actually bought the data from a third
4 party, Local Labs.

5 Now, Local Labs did sign an affidavit, and
6 Local Labs is potentially subject to criminal
7 liability under Section 1-4-5.5. But Local Labs is
8 not a plaintiff in this case; and therefore, the
9 so-called use restrictions which are in 1-4-5.5 are
10 not before the Court. Their constitutionality is not
11 before the Court, and they're not actually relevant
12 for the issues before the Court.

13 The only relevant section, again, is
14 1-4-5.5, which by virtue of incorporating the
15 restrictions of the Voter Records System Act,
16 prohibits anyone who has possession of New Mexico
17 voter data from selling it, loaning it, providing
18 access to it, or otherwise surrendering it, including
19 by uploading it to a website, which is what VRF has
20 done.

21 And so, given that that's the relevant
22 section or statute that the Court must decide whether
23 it is constitutional under the First Amendment, the
24 Secretary of State's, you know, statements in media
25 posts or her contributions to ProPublica are simply

1 not relevant.

2 What we believe -- well, VRF's position is
3 that to an extent those statements perhaps
4 demonstrate that 1-4-5.5 gives a public official too
5 much discretion in deciding who to prosecute. That's
6 their over-breadth -- or void for vagueness argument.
7 But again that section is not before the Court.

8 So given that the evidence they seek to
9 question the Secretary of State on is not even
10 relevant for the Court's decision, she should not be
11 required to appear in person, especially in a time
12 that -- as the Court I'm sure is very well aware --
13 that the State is under an extreme emergency, given
14 the wildfires, given that in-person early voting has
15 already began, given that a number of counties are
16 preparing to evacuate, and a number of communities
17 have already evacuated, and the Secretary of State's
18 Office needs to make contingency plans for those
19 counties in case they do evacuate, and in case their
20 clerks' offices are not open to actually receive
21 early voting. And at this point, we're so close to
22 election day that early voting is no longer the only
23 issue. I mean, she and her deputy -- their time is
24 fully, fully occupied at this point with making sure
25 that election day happens for those counties that are

1 under emergency orders and that are under threat of
2 full evacuations.

3 And also just turning to the additional
4 grounds to our motion to quash the two subpoenas that
5 were served yesterday. Again, as the Deputy
6 Secretary of State Ms. Sharon Pino is covered by the
7 Apex Doctrine to the same extent as the Secretary of
8 State, and also again, those two subpoenas were
9 served ineffectively, without providing the requisite
10 fees. Now, I was asked by opposing counsel to accept
11 service by email, and I was happy to oblige. But we
12 never discussed waiving the fees, we never discussed
13 the fees at all.

14 So service is ineffective for that reason,
15 and they should be quashed for that reason alone.
16 But also, you know, given that they were served only
17 seven days prior to the date of compliance, and given
18 the emergency situation in New Mexico, they simply do
19 not give us reasonable time to prepare. I mean,
20 we've had to -- you know, again, as any party
21 defendants do have a right to prepare and due process
22 rights, and we are constantly being -- you know,
23 being surprised with additional subpoenas.

24 So I think I've covered everything that I
25 had at this point. Thank you, Your Honor. And I

1 would like to reserve some time for rebuttal.

2 THE COURT: Let me -- I'll be asking the
3 plaintiff this question as well, but how would you
4 characterize what Voter Reference Foundation is? Do
5 you see it as a news organization? Or what do you
6 see it -- in your efforts to regulate it, what do you
7 see it as being?

8 MS. SERAFIMOVA: Well, you know, as we
9 stated in our answer, we don't have sufficient
10 information to know what they are. But I think,
11 having seen their website, they don't -- what they do
12 is post the voter rolls of states. There is no
13 editorial, there is no news reporting in any sense of
14 that word. So no, we do not see them as a news
15 organization. They are, by their own admission, a
16 nonprofit that wants to publicize voter rolls for
17 every state in the country. So they want to make the
18 voter history and address and name and party
19 affiliation of each and every registered voter in the
20 United States public.

21 THE COURT: And when you were arguing, am I
22 understanding you correctly that Voter Reference
23 Foundation did not get the materials they're wanting
24 to post from the State of New Mexico, they got it
25 from another party?

1 MS. SERAFIMOVA: That is correct. Even
2 though in their initial pleadings -- meaning the
3 complaint and the motion -- they stated numerous
4 times that they obtained this information from the
5 Secretary of State's Office, that is, in fact,
6 incorrect. They have now admitted in their reply
7 that they did obtain it from Local Labs. And it's
8 our assumption that they bought it from Local Labs,
9 because Local Labs is a service company. They
10 basically -- you know, they obtain public records on
11 behalf of their -- for their clients.

12 And of course, given that the cost in this
13 case was over \$5,000, I think -- I mean -- and VRF is
14 not disputing that -- but it is our assumption that
15 they paid for the service and they paid for the data.
16 But they did not sign the affidavit that's required
17 under Section 1-4-5.5. They did not obtain the data
18 from the Secretary of State's Office or the county
19 clerks' offices in New Mexico. They purchased it
20 from Local Labs.

21 THE COURT: Well, if the Albuquerque
22 Journal got this same material, would you agree that
23 you could not prosecute them for publishing the
24 material?

25 MS. SERAFIMOVA: Well, we are going deeply

1 in the merits of the case, and I'm happy to do that,
2 but -- so I just need to clarify, the Albuquerque
3 Journal, just as VRF, would be free to talk about the
4 data, to synthesize the data, to argue about its
5 accuracy, to discuss it in any -- you know, in any
6 way, shape, or form they wish to.

7 What Section 1-4-5.6 prohibits is that they
8 sell the actual data set that they receive from us,
9 that they loan it to anybody, that they otherwise
10 provide access to it, or surrender it in any way.
11 And that is important, it's a very important
12 distinction.

13 Section 1-4-5.6 does not criminalize speech
14 in the everyday sense of the word. Anyone and
15 everyone is free to discuss the data. What they are
16 not allowed to do is to actually, you know, duplicate
17 the set. Because then, for one, you know, we don't
18 collect the fees for that, but -- that's more of a
19 minor consideration -- but the issue is that by
20 publishing the data, for example, online, as VRF has
21 done at some point, it creates an inaccurate picture.

22 As we explain in our opposition for the
23 motion for preliminary injunction, every data set is
24 a snapshot of registered voters in New Mexico as of
25 that day only. And so it changes, it is updated

1 monthly. So it creates the false impression that the
2 data that we maintain is -- looks one way; when, in
3 fact, it's a dynamic database that is constantly
4 updated.

5 And also, you know, by being able to put
6 our data set online, that breaks the trust that
7 voters have in the Secretary of State's Office, that
8 their data -- the data that they are required by law
9 to give us, in order to exercise their privilege and
10 right to vote, will be kept confidential.

11 And so, you know, that is the harm, that is
12 the danger, that by saying this is the Secretary of
13 State's data, here it is, they circumvent the
14 requirement that every request or promise under the
15 penalty of perjury to not use it for unlawful
16 purposes and keep it confidential, except for a
17 limited set of circumstances where they are
18 statutorily entitled to use it.

19 So, again, the Albuquerque Journal can
20 write about it, can discuss it, and say: We obtained
21 the data on such-and-such date, and on that date that
22 is what it looked like. What they cannot do is
23 actually post the data, essentially, the contents of
24 our entire database as it existed on the date of
25 their request.

1 THE COURT: All right. Anything else, Ms.
2 Serafimova?

3 MS. SERAFIMOVA: Not at this point, Your
4 Honor. But, again, I would like to reserve some time
5 rebuttal.

6 THE COURT: All right. Thank you, Ms.
7 Serafimova.

8 Mr. Greim, are you taking the lead on this?

9 MR. GREIM: Yes, Your Honor.

10 So I think I'll start -- I have more to say
11 than I thought I would need to get into on this call,
12 but some of the questions that you've asked, I think,
13 are a good entry point.

14 THE COURT: Let me ask you this: Let me
15 try to refocus this hearing -- because we've got a
16 motion hearing next week -- but let me ask you some
17 things at the beginning here.

18 It seems to me like five witnesses is a lot
19 from the Secretary of State's Office. I don't know
20 how big it is now, but it's always been one of the
21 smaller offices up in Santa Fe. Five seems like a
22 lot.

23 Are you looking for inconsistencies between
24 their testimony? Are you looking for them to verify?
25 Or does each one of them have something very distinct

1 that only that witness can provide?

2 MR. GREIM: Your Honor, they do each have
3 something distinct. And I think -- I can give what
4 those things are.

5 But I think it makes sense to step back and
6 look and see what the case is about. I won't argue
7 the whole thing. But there are really two halves to
8 this case. One are some purely legal and statutory
9 questions that I think I've got to correct here for
10 the Court to understand.

11 THE COURT: Okay, I'll let you do that, but
12 let's focus on the mechanics of the hearing today.
13 You've got five witnesses. I think that y'all had
14 indicated about two-and-a-half hours for this
15 hearing. That seems to me to be a lot of witnesses.
16 Can you do it with three? Can you do it with two?
17 Do you need witnesses at all? I mean, if these are
18 public statements that the Secretary has made, what
19 are the witnesses really giving us here?

20 MR. GREIM: Right. Well, what they're
21 going to give us is the constitutional part of our
22 argument.

23 So there are two halves to this case. The
24 first half of the case is: What does the statute
25 actually prohibit?

1 And so, when we initially set this for
2 hearing -- I know it's been moved back -- our intent
3 was to have the only factual development be we would
4 bring in our client to talk about what VRF is and
5 what it does. And then we would just simply show
6 you, under the statutes, that this is impermissible,
7 that what the Secretary of State is doing is not
8 actually what the law requires.

9 Since that time, we have -- actually, we
10 were never given this by the Secretary of State. But
11 we have what we believe is the referral letter that
12 the Secretary of State shared with some politically
13 allied media, and that now we have found. And so
14 what we are able to do now at this hearing, that we
15 weren't going to be able to do before, is show that
16 there is content- and viewpoint-based discrimination
17 going on, and not simply, you know, mistakenly
18 expanding the reach of New Mexico law.

19 And so, Your Honor, we probably -- you
20 know, candidly, if they would stipulate to certain
21 things, we could probably get by without one or two
22 of the other witnesses. But what we really have to
23 have are the people who are the decision makers who
24 decided that this group -- that the speech is
25 misinformation, and therefore, falls outside of our

1 statutes. And candidly, that person is not going to
2 be Ms. -- I think I heard it pronounced Vigil -- who
3 actually is on this call. I see her name on here. I
4 think she's actually participating here today. She's
5 not going to know the answer to that. In fact, we
6 think that she had to be told not to even process
7 requests directly from Voter Reference Foundation. I
8 think we'll establish that at the hearing. I don't
9 want to get too far into the merits.

10 But the people that can answer those
11 questions are the Secretary of State, and then the
12 Deputy, Ms. Pino, who actually drafted the referral
13 letter.

14 And that referral letter, Your Honor,
15 paints a very different picture of New Mexico law
16 than what we just heard from the Attorney General's
17 Office today. In other words, they've shifted their
18 theory to try to remove the appearance of having a
19 viewpoint or content-based reason for doing this.

20 And so I can get into that a little bit
21 more, but I think that the question you asked about
22 the Albuquerque paper, I think, is important.
23 Because the answer that you just got from the
24 Attorney General walks through the statutes. But as
25 we mention in our response, the citation to the

1 statutes is just simply not correct.

2 So the key statute in this case is actually
3 1-4.5.5(c). And what that statute says is that if
4 you want to request this data, you can. It's not,
5 you know, private in all but a few cases. Instead,
6 you can request it under 1-4-5.5(c), so long as you
7 fill out an affidavit saying that you will not use or
8 share the data except for certain purposes. And
9 those purposes are election campaigns -- I'm sorry,
10 governmental use, election or election-campaign
11 related uses.

12 And so the Secretary of State actually came
13 up with an affidavit form that Local Labs -- who is
14 VRF's vendor -- signed, and they checked "election
15 related." And they signed an authorization which
16 does not say what the new authorization says. Very
17 important; very, very important.

18 The forms have all been changed to follow
19 the theory that you just heard. That's not what the
20 forms that we signed, that our vendor originally
21 signed, said. What it says actually is: You won't
22 make available the data to others to use for a use
23 other than governmental election, and then the one we
24 mentioned, research for campaign focus.

25 There is no blanket ban on sharing the data

1 with someone else. That's the most important point.
2 There is no blanket ban on doing that. You
3 absolutely can, so long as the purpose for which you
4 are sharing falls within the statute. You absolutely
5 can.

6 The other important point is that there is
7 no requirement that anyone who ever comes into
8 possession of the data -- so there is no requirement
9 that the person with whom you share the data also go
10 back and sign the affidavit. That is not what the
11 statute says. There is not a free-floating
12 requirement, you know, somehow implied from the
13 statutes; that whoever ends up seeing this data has
14 to go back and sign the affidavit. Instead, it says
15 the requester has to sign the affidavit. That's what
16 the statute says.

17 Now, there is a separate statute that very
18 specifically says who is required not to share the
19 data. And it is limited to state workers, and it is
20 limited to certain contractors that the State uses
21 for sort of data entry purposes. That's all that the
22 statute says.

23 The State's theory -- we addressed this,
24 this is very important -- says that -- actually,
25 there is a different statute elsewhere that expands

1 the bubble out, and says that no one can share the
2 data. But, Your Honor, I don't want to -- I mean,
3 you'll see the text in the statutes if you go through
4 the materials, that's absolutely not what that other
5 provision says. The 1-4-5.6 simply says, "Unlawful
6 use of voter data," then it goes on, "consists of the
7 knowing and willful use of such information for
8 purposes prohibited by the Voter Records System Act."
9 Then it cites over to Article 5. So it just says:
10 If you violate Article 5, it's an unlawful use, if
11 it's also knowing and willful. And it's got to be
12 for purposes prohibited there.

13 So that's interesting. The first thing to
14 notice is that it's talking about the purposes
15 prohibited by the act. It's not talking just about
16 sharing.

17 But then go to the next section. This is
18 really what they hang their hat on. And this says,
19 "Any person, organization, or corporation, or
20 basically agents thereof, who commit unlawful use --
21 that's the thing that was just defined in the prior
22 section -- "is guilty of a 4th degree felony." That
23 section requires you to first find that there has
24 actually been a violation of some other part of the
25 act. It doesn't say that specific statutes that only

1 apply to specific people now apply to the entire
2 world, to people inside and outside of New Mexico.
3 It absolutely does not say that. This is a very
4 basic bare bones statute that every election code
5 has, that simply gives you the standard for
6 converting a violation into a criminal violation, and
7 then sets forth what the penalties are. It does
8 expand 1-5-22 out to everybody else.

9 And, I mean, that's key issue, Your Honor.
10 Because if they're wrong about that, then they've got
11 only one other reason to come after Voter Reference
12 Foundation. And that other reason is they don't like
13 the use to which Voter Reference Foundation is
14 putting the data. They don't like the fact -- and by
15 the way, there is not just a data file, Your Honor,
16 placed on the internet that someone can just download
17 and then themselves use it.

18 They don't like that somebody can type in
19 their own name or a neighbor's name or someone they
20 know just died, or whatever it is, and see whether
21 that person is voting. They don't like that. In
22 their view, that is not an election-related use. In
23 fact, that's the reason why they've removed the
24 entire category from the request form of
25 election-related uses. Now, it's got to be an

1 election campaign. So they've actually removed that
2 because they don't like that part of the statute.

3 So, Your Honor, the problem here is that
4 we've got a flat-out misreading of the statute. And
5 by the way, this theory that you just heard is the
6 secondary theory in the referral to the Attorney
7 General.

8 Many of these other statements that we're
9 going to put into evidence that come from the
10 Secretary of State, that come from Mr. Curtis,
11 explain that the real problem is that they think
12 Voter Reference Foundation is engaging in
13 misinformation, and in their view, impugning the work
14 of the Secretary of State or engaging in, quote,
15 "misinformation" about how good the voter rolls
16 really are, actually doesn't meet the use
17 requirements. So it's a content-based attack. That,
18 Your Honor, is what -- we didn't know that there was
19 going to be such evidence when we initially scheduled
20 this. We intended to focus on the statutory issue.
21 But that's now what we're going to be able to show.

22 By the way, I think I heard counsel say
23 that we have every written document that's relevant
24 to this, that we have everything. I mean, I have no
25 idea where that statement comes from. It's certainly

1 not correct. We have gotten a copy of the referral.
2 We've gotten a few other documents that were
3 disclosed in a public information request. But we
4 need to get these documents. I mean, I think we're
5 going to find more. That's not for this hearing,
6 though, I just want to make that point.

7 Then I also want to walk through the
8 different witnesses. I think Ms. Vigil will be
9 important because she'll be able to talk about the
10 normal process of making requests, and she'll be able
11 to give some basic background facts here. But
12 frankly, I think much of what she knows about the
13 decisions were just told to her from above. She may
14 not believe there is any viewpoint-based issue here
15 because she was not in on that. Obviously (Zoom
16 audio garbled.)

17 THE COURT: Hold on just a second. Repeat
18 that last sentence because it got garbled.

19 MR. GREIM: Okay. I'm sorry. I know when
20 I turn away from the computer, then it goes away
21 sometimes.

22 I think what I said was that Ms. Vigil, I
23 think, you know, she understands the theory that the
24 Attorney General is now arguing in this case. I
25 don't think she will understand the content-based

1 reason that the forms were changed and that VRF was
2 attacked in the first place. So, you know, I think
3 her information will be very low level, and I
4 think -- she's listening in right now, so she's
5 hearing my outline, I guess, of what I'm going to ask
6 her about -- but I think she will just be able to
7 speak more to the mechanics.

8 The second witness we asked for, but I
9 think they're actually going to be called by the
10 Secretary as well, she was the one who actually
11 processed the application here and took payment.

12 She also seemed to try to do a little
13 sleuthing to determine that Local Labs was the
14 requester. But, of course, the Secretary of State
15 already knew that Local Labs was acting on behalf of
16 Voter Reference Foundation. If nothing else,
17 ProPublica told them that. And we don't try to hide
18 the fact that there are companies who are good at
19 doing this.

20 We attached a list, Your Honor, of all the
21 different people, just like Local Labs, who go buy
22 this data from the Secretary of State, then they
23 share it with clients. And this is the first
24 instance where suddenly the sharing of the data has
25 become a crime.

1 But, you know, we even disclose on our
2 website -- if you click through, we show you the
3 entire email chain by which we obtain the data. So
4 Voter Reference Foundation makes it very clear to
5 everyone that we obtained it from Local Labs, and we
6 do that across the country.

7 So anyway, those are the first two
8 witnesses. I diverged for a little bit.

9 The Secretary of State can speak about the
10 actual basis for the referral. Interestingly, in the
11 complaint, paragraph 52, where we laid out what the
12 Secretary's statements were, I thought it was
13 interesting the defense would not actually admit the
14 Secretary made those statements. They would -- they
15 have only admitted that those quotes appeared in an
16 article that we attached. I think it's troubling
17 that they won't admit (Zoom audio garbled) and
18 wouldn't do that even in their answer.

19 Finally, of course, the Secretary of State
20 re-tweeted (Zoom audio garbled.)

21 THE COURT: Mr. Greim, do stare at the
22 camera, because when you turn away, it gets harder to
23 hear for us. So try to put your notes or whatever
24 you're looking at, try to position it so you can keep
25 talking straight at us. Because when you turn away,

1 your volume and sound goes way down.

2 MR. GREIM: All right. I apologize. You
3 can probably see I'm doing this from home. We had an
4 issue at our office, and I'm not used to being in
5 these surroundings during the middle of the day.

6 So, Your Honor, I think we've got to hear
7 from the Secretary of State, especially because this
8 was her main criticism of Voter Reference Foundation.
9 She said it was attempting to impugn the integrity of
10 the voter rolls. Impugn. Not damage, not destroy,
11 not actually mess with the voter rolls, but instead,
12 in the view of other people, it was impugning the
13 integrity of the voter rolls.

14 And what was she talking about there? The
15 ProPublica piece that she re-tweeted talked not only
16 about Voter Reference Foundation's website, where you
17 can type in information to see someone has voted in
18 possible states. But there is a separate Voter
19 Reference Foundation website, where it publishes its
20 own analysis, Your Honor, of what the voter
21 information data shows.

22 And so, in fact -- we'll see this later --
23 Voter Reference Foundation found some issues in the
24 New Mexico data, and reached out to the Secretary of
25 State's Office to try to get an explanation from

1 them, did that back in 2021.

2 Then, Voter Reference Foundation
3 directly -- not through Local Labs -- but directly
4 reached out to understand this gap in the data in
5 February. And the Secretary of State's Office
6 position is it will not answer, it will not provide
7 data to Voter Reference Foundation. There is a
8 blanket ban on it. And again, the only basis for
9 that -- the only basis that could exist -- and we'll
10 see this in the documents -- is that the Secretary of
11 State does not like the speech that Voter Reference
12 Foundation is engaging in.

13 And remember, the speech is two things:
14 Analysis of the data. But also the case law we cited
15 to you shows it's providing the data itself. The
16 Secretary of State wants to be the sort of only game
17 in town with discussion about how good the data is
18 and its integrity.

19 But our basic position is, no, the National
20 Voter Registration Act makes this available to
21 citizens for a reason. It's to do just what VRF is
22 doing.

23 So the two big problems -- I'll just circle
24 it all back together now -- are number one, the
25 Secretary of State is absolutely misreading the

1 statutes. And I think you'll see that in our
2 briefing for Tuesday.

3 But number two, we now know why. It's a
4 content -- and I would say now at this point, we can
5 establish a viewpoint-based distinction. And so even
6 if we were wrong about the statutes, they are
7 applying them only against us based on the content of
8 our speech about that data. They're doing it to
9 another group as well. And these are not things that
10 the people who process requests at the lowest level
11 are going to be able to tell us. That's why we need
12 to hear from these witnesses.

13 The final technical issue that you asked me
14 about at the outset, I'll just respond to quickly. I
15 mean, I think if we had to whittle people down, we
16 could probably get by, just for the purposes of
17 Tuesday, with either the Secretary of State or
18 Ms. Pino. We don't probably need to have both of
19 them for purposes of Tuesday.

20 But once we learned that they were going to
21 fight us on the Secretary of State, which would have
22 been the fastest way to go, we had to protect
23 ourselves from the possibility that we would end up
24 with only these two low-level witnesses who would not
25 be able to give us the information we needed.

1 So we would be fine with one or the other
2 of those. But we do need Mr. Curtis. Mr. Curtis
3 made statements to ProPublica about exactly why
4 they're going after VRF.

5 And I think we do need Ms. Vigil, if
6 nothing else, to lay the sufficient groundwork. I'll
7 stop there for now. I know I went on for about 20
8 minutes.

9 THE COURT: Are you comfortable with these
10 people testifying by Zoom, so that if they're in
11 Santa Fe, they don't have to leave their office, and
12 they just can kind of come into a room up there and
13 testify?

14 MR. GREIM: Yes, absolutely, Your Honor. I
15 mean, that will probably be faster.

16 You know, I'm well aware that if we had all
17 five people go, we wouldn't be able to do it. But I
18 didn't want to wait and have this hearing -- maybe if
19 we learn we can't use the Secretary now, that will be
20 even later serving the subpoena. So I wanted to make
21 sure that we had a backup plan.

22 So my proposal would be Ms. Vigil. You
23 know, I could probably dispense with
24 Ms. Hutchinson -- if we can get stipulations on the
25 process -- either Ms. Pino or the Secretary, and then

1 Mr. Curtis. That leaves us either three or four
2 witnesses.

3 THE COURT: How do you describe your
4 client? I mean, do you think you're a news
5 organization? A media organization? How do you see
6 and describe yourself?

7 MR. GREIM: Well, Your Honor, I think for
8 purposes of the First Amendment, you know, status as
9 a media organization in this context won't matter
10 under the law. But I think they would view
11 themselves as a hybrid. I mean, on the one hand,
12 they are publishing analyses of the data. But on the
13 other hand, part of the goal here is to sort of crowd
14 source to the public at large the things that are not
15 going to be obvious to somebody who is just comparing
16 data one against the other. I mean, public access is
17 what will uncover lots of issues that otherwise
18 wouldn't be known to the Secretary or to VRF.

19 THE COURT: Well, help me with my
20 imagination. What is it that it's going to uncover?
21 For example, people who have not voted for -- like
22 myself, I haven't voted since I've become a federal
23 judge -- is it going to uncover that somebody may
24 have voted for me or something like that? Is that
25 the sort of thing that you're looking at -- looking

1 for, or what is it that -- the discrepancies or
2 problems that you're looking for?

3 MR. GREIM: Sure. I mean, one thing may be
4 that someone votes in two different states, because
5 you know, the data can be searched across states. So
6 that may be one issue.

7 Another issue may be that they say they do
8 a great job of cleaning the voter rolls. That's
9 wonderful if that's true. But maybe there are people
10 who have passed away or who have moved who are still
11 on there, and someone is voting. You know, a
12 neighbor may know that someone has died or moved
13 away; they may enter their name and say: Well, wait
14 a second, why did they vote? And again, those aren't
15 issues that just matching huge databases from, you
16 know, various sources against the existing rolls are
17 going to find out.

18 And candidly, at the end of the day, what
19 if we don't find discrepancies? I mean, that's a
20 great thing as well. Because it means now people
21 will have confidence that: Don't just take the
22 Secretary of State's word for it. The citizens can
23 access this data on their own, just like campaigns
24 can, just like academic researchers can. They can
25 type in their own name or their uncle's name or

1 something, and they can verify that it's accurate.
2 So it's not that our purpose is only served by
3 uncovering discrepancies.

4 THE COURT: All right. Anything else,
5 Mr. Greim?

6 MR. GREIM: Your Honor, I think that's all.
7 We want to have an efficient hearing on
8 Tuesday, and we want to make our two main showings,
9 and I think we'll be able to do that.

10 THE COURT: All right. Thank you,
11 Mr. Greim.

12 Ms. Serafimova, you've got a proposal here
13 on the table. Is that of any interest to you that
14 these witnesses can appear by Zoom, and you can
15 decide between Ms. Pino and the Secretary of State?
16 Anything there that's helpful, useful to you, worth
17 agreeing to?

18 MS. SERAFIMOVA: Well, Your Honor, we
19 have -- we've already agreed to make Ms. Vigil
20 available. And just an important clarification, she
21 is not a low-level employee. She's the Director of
22 Elections. And she is intimately familiar with the
23 day-to-day business in the state.

24 We can probably agree to Mr. Curtis
25 appearing.

1 But again, the Secretary of State and the
2 Deputy Secretary, especially given that in-person
3 voting has begun, and given the emergency situation
4 in New Mexico, we ask that the Court quash those
5 subpoenas.

6 And if I may, Your Honor, in rebuttal, I
7 would like the opportunity to clarify a handful of
8 misstatements that were made, if I may.

9 THE COURT: You may.

10 MS. SERAFIMOVA: So first, opposing counsel
11 represented that the voter information authorization
12 form has changed in a way that demonstrates animus to
13 VRF specifically. And that is simply not true. Yes,
14 the authorization form was revised in February of
15 this year.

16 But I have in my hands the authorization
17 form that was signed by Local Labs. And under
18 authorization it reads, "Unlawful use of the
19 information requested on this form shall consist of
20 willful selling, loaning, providing access to, or
21 otherwise surrendering, duplicating, or alteration of
22 information as stated in the Voter Records System
23 Act." So that position, that interpretation of the
24 law has never changed.

25 And I mean, as the Court is well aware, the

1 two parties, the two defendants are the Secretary of
2 State's Office and the Attorney General's Office.
3 And we are the two state entities that are
4 statutorily required to interpret and enforce the
5 Election Code. So our interpretation is accorded
6 significant deference, opposing counsel's
7 disagreement notwithstanding.

8 Now, it is true that the referral letter --
9 this is the other clarification that I would like to
10 make -- opposing counsel discussed the fact that the
11 referral letter that was sent from the Secretary of
12 State's Office to the Attorney General's Office
13 mentions both Sections 1-4-5.5, which talks about the
14 affidavit, and Section 1-4-5.6, which talks about
15 everyone else selling or otherwise surrendering voter
16 data. The reason was because Local Labs -- the
17 referral mentions both VRF and Local Labs. And, of
18 course, Local Labs did sign the affidavit. So that
19 is the reason why the referral mentions both
20 sections.

21 We have the entity that signed the
22 authorization and then violated it, and then the
23 entity that obtained the voter data without signing
24 the authorization. And in the Secretary of State's
25 opinion, as the State entity that enforces and

1 interprets the Election Code, that was a violation of
2 1-4-5.6. So that is the reason. So there is no
3 content-based discrimination.

4 Opposing counsel also stated that at the
5 time they filed the complaint and the motion, they
6 were unaware that the Secretary of State had made
7 public statements that there is misinformation; that
8 it's hard to believe, given that the statements are
9 public, and that they have been able to search
10 through social media, and have other press releases,
11 copies of press releases. But that is again not
12 content-based discrimination. That is the State
13 interests, the important State interest, that we have
14 asserted in our response to the motion for
15 preliminary injunction and today.

16 That is the harm that is being done to New
17 Mexico voters and our voting system in general, by
18 making the Secretary of State's database public.
19 Because again, it is a snapshot. And so, to the
20 extent that it demonstrates discrepancies, those
21 discrepancies are actually -- unless somehow the
22 voter data is cross-referenced for that specific
23 moment in time, those discrepancies may very well be
24 incorrect, because again, it is updated on a monthly
25 basis.

1 So in our response to the motion for
2 preliminary injunction, the fourth State interest,
3 important State interest, that we put forward in
4 support of our position that the First Amendment has
5 not been violated is that because voter data produced
6 at any single moment represents a snapshot of the
7 voter files as of that moment; whereas, voter files
8 may change in the future, thereby rendering the
9 produced voter data no longer accurate, disseminating
10 voter data may lead to disinformation which would
11 further erode voter confidence in the voter
12 registration system. So that is the State's
13 interests. That is not commonplace discrimination.

14 Again, our interpretation of the law has
15 always been the Section 1-1-5.6 bridges the gap and
16 applies to people who have come into possession of
17 voter data without signing the affidavit and without
18 having access to it by being state employees. That
19 is the gap that that section covers. And that is
20 consistent in our referral or the Secretary of
21 State's referral letter to the Attorney General's
22 Office, because it addressed both VRF's conduct, and
23 Local Labs, as the entity who actually signed the
24 this.

25 And so -- and lastly, the authorization was

1 updated, but it has not changed materially. And it
2 certainly does not demonstrate any animus, the same
3 way that unlawful use of the information requested,
4 just as is the wilful selling, loaning, providing
5 access to, or otherwise surrendering or duplicating
6 it is present in both versions of the authorization
7 form.

8 And if I may -- just if you give me a
9 second to just make sure that I covered everything I
10 intended to cover -- oh, opposing counsel mentioned a
11 blanket ban on VRF. What, in fact, has happened is
12 that now that the Secretary of State's Office knows
13 that VRF has violated the Election Code, yes, they
14 will not produce any more voter data to that entity,
15 because they would be violating, essentially, their
16 duty to protect the data under the statute by
17 knowingly giving it to an entity that is currently
18 alleged to have violated the law.

19 So that is why, you know, at the moment no
20 further data requests will be processed for VRF.
21 This is not -- it's not unreasonable. In fact, it is
22 a requirement. They would be abrogating their
23 duties. Secretary of State's Office would be
24 absolutely violating their statutory duty if they
25 were to ignore the fact that VRF has violated the

1 Election Code.

2 Also, to the extent VRF alleges that we,
3 the Secretary of State's Office, has violated state
4 law, I mean, that's not a First Amendment claim, and
5 it should not be before this Court. They started off
6 by saying that we have misinterpreted our statute.
7 And we are saying that they are unlawful, when in
8 fact it, is lawful under the statute. That's not a
9 First Amendment claim for this Court to decide.

10 And I believe -- oh, and just the final
11 point I'd like to make is that, prior to today, VRF
12 has never before described themselves as a news
13 organization. So for what that's worth, I think it
14 should be taken into account. Today they described
15 themselves as a hybrid, but they did not do that in
16 their complaint, in their motion, in any of their
17 filings.

18 And then finally, to the extent, you know,
19 opposing counsel said that we did not admit certain
20 statements were made in the article, that is actually
21 not accurate. We do admit in the answer -- I mean,
22 we admitted the allegation as it was written. There
23 was no -- you know, no attempt to hide the ball here.

24 So, thank you. Going back to your initial
25 question, we do ask the Court to quash the subpoenas

1 of the Secretary of State and the Deputy Secretary of
2 State, both for failing to pay the fees; for failing
3 to provide a reasonable amount of time to prepare
4 with respect to the deputy, and most importantly,
5 under the Apex Doctrine, because given the emergency
6 situation in New Mexico, and all the information that
7 we've discussed, their testimony is unnecessary. And
8 it would be a severe burden on the office.

9 Thank you, Your Honor.

10 THE COURT: I'll give you the last word,
11 but I want to ask Mr. Greim a question. And then
12 I'll give you, Ms. Serafimova, the last word.

13 Mr. Greim, at the end of the day next week,
14 what is it that you're asking the Court to do? What
15 is the -- if you were writing the order of your
16 requested injunction, what would it say?

17 MR. GREIM: We want to be able to repost
18 the -- and this is not going to be as good as what we
19 typed up in our filing -- but I would say we want to
20 be able to repost the data during the pendency of
21 this litigation without being criminally prosecuted
22 for that.

23 THE COURT: Okay. All right. Anything
24 else you want to say, Ms. Serafimova?

25 MS. SERAFIMOVA: Your Honor, reposting the

1 data would be irreparable harm to New Mexico voters,
2 because, of course, once it's out there, calling it
3 back is practically impossible. And if the Court
4 were to ultimately find that doing so is unlawful,
5 and not -- and the prohibition is not a violation of
6 the First Amendment, the State would be left without
7 a remedy.

8 You know, the preliminary injunction asks
9 for all the relief that they could be entitled at the
10 end of a merits hearing, and is therefore, a
11 disfavored injunction. And we strongly believe that
12 given the harm to the State and the public, and of
13 course, the issues with their legal claim, Voter
14 Reference will not prevail on the merits.

15 THE COURT: All right. Thank you, Ms.
16 Serafimova.

17 Well, when I'm working on a preliminary
18 injunction like this, I know that the law is very
19 important, and I may or may not get the law right.
20 But what I owe for the system as a trial judge is to
21 get the facts right. Somebody may tell me I've got
22 the law wrong, and I understand that. But it is my
23 duty to get the facts right. And I've read too many
24 appellate decisions that involve First Amendment or
25 other constitutional issues, where they even get to

1 the Supreme Court sometime, and the record is thin,
2 and that doesn't help the system.

3 So I think that I need to be careful here
4 that I don't clip too many wings here at this stage
5 and not allow for a robust record. I will -- I'm not
6 going to quash any subpoenas today. And I think the
7 Secretary of State's Office needs to be prepared to
8 put on four witnesses. They can choose between Pino
9 and the Secretary of State, so that it's down to four
10 witnesses. And it sounds like that a stipulation may
11 take care of another. But I'm not going to, myself,
12 start cutting down this record without being more
13 knowledgeable about the facts that may prove
14 important. It sounds to me like there is enough
15 complexity to the issues, and maybe even the factual
16 record, that I should not do that today.

17 So I will continue to look at these
18 motions, and try to get some opinion and order out on
19 the motions, two motions to quash. But at the
20 present time, I'm not granting them. And the
21 Secretary of State will need to be prepared to
22 provide four witnesses or stipulations that eliminate
23 the need for one, and the Secretary of State can
24 choose between herself and Pino as far as a witness.

25 All right. Is there anything else we need

1 to discuss while we're together? Is there anything
2 else I can do for you, Ms. Serafimova?

3 MS. SERAFIMOVA: No, Your Honor. Thank
4 you.

5 THE COURT: All right. How about you,
6 Mr. Greim?

7 MR. GREIM: I think we're okay, Your Honor.
8 My only question is should we plan to do things by
9 Zoom for all the witnesses?

10 THE COURT: I will let y'all decide that.
11 If there is a disagreement, I can get back on and
12 decide those issues. If y'all agree on anything,
13 it's fine with me. I sit here and talk to this
14 screen all day long. New Mexico is a big state. And
15 so I don't require people to come. I know you're out
16 of state. So I'm fine with doing things by Zoom.
17 But some people like to be in a courtroom. I can
18 tell you this: I used to, as an attorney, drive from
19 Albuquerque to Taos to be in front of a judge for a
20 short hearing because I thought it was terribly
21 important. I've learned over the last 19 years that
22 I have to tell people no and yes and other things,
23 and it doesn't really matter whether they're in the
24 courtroom or by Zoom.

25 But I leave that to y'all, how you want to

1 put on your case, how you want to put on your
2 witnesses. If there is a disagreement, I can get
3 back on with you. But as long as y'all agree, I'm
4 fine. And I lean toward giving people choices. Is
5 that responsive enough?

6 MR. GREIM: I will be there.

7 THE COURT: Is that responsive enough, or
8 do you need some more specific guidance, Mr. Greim?

9 MR. GREIM: Your Honor, that's just what we
10 need. And I was going to tell you, I will be there,
11 so I'm looking forward to it.

12 THE COURT: Anything else, Mr. Greim?

13 MR. GREIM: Nothing more, Your Honor.

14 THE COURT: All right. I'll appreciate
15 your presentations this morning.

16 I'll try to get some opinion and order out
17 to you. But be patient with me. I've got a criminal
18 case that's kind of eating my lunch right now. And
19 I'll turn to this as soon as I can, and be fully
20 prepared for the hearing next week by reading the
21 more substantive documents.

22 All right. Y'all have a good afternoon.
23 Let us know if we can be of any help.

24 MS. SERAFIMOVA: Judge, if I may. I'm
25 sorry, just final clarification. So you would be

1 okay with the attorneys also appearing by Zoom, if we
2 chose to; is that right?

3 THE COURT: Do you have any objection to
4 that, Mr. Greim?

5 MR. GREIM: No objection, Your Honor.

6 THE COURT: Okay. Yeah, I think it's up to
7 you, Ms. Serafimova. If you want to appear by Zoom,
8 that's fine. If you want to be here, that's fine.
9 Sounds like y'all are, you know, comfortable with
10 letting everybody do their own thing. So I'll leave
11 that to you.

12 MS. SERAFIMOVA: And I'll make sure that I
13 have a good connection if we --

14 THE COURT: All right. That's probably a
15 good idea. That is probably a good idea.

16 All right. Anything else? All right.
17 Y'all have a good afternoon. Let us know if we need
18 to get back together. Otherwise, I'll see y'all next
19 week.

20 MR. GREIM: Thank you, Your Honor.

21 (The Court stood in recess.)

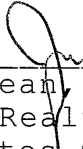
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UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on May 24, 2022.



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